

JAMES V. FITZGERALD, III (State Bar No. 55632)  
NOAH G. BLECHMAN (State Bar No. 197167)  
J. GARRET DEAL (State Bar No. 249934)  
McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
PFALZER, BORGES & BROTHERS LLP  
1211 Newell Avenue  
Post Office Box 5288  
Walnut Creek, CA 94596  
Telephone: (925) 939-5330  
Facsimile: (925) 939-0203

Attorneys for Defendants  
CITY OF MARTINEZ, GLENN WALKUP, J. ROGERS, and  
B. CARTER

STAN CASPER (State Bar. No. 56705)  
CASPER, MEADOWS, SCHWARTZ & COOK  
California Plaza  
2121 North California Blvd., Suite 1020  
Walnut Creek, CA 94596  
Telephone: (925) 947-1147  
Facsimile: (925) 947-1131

Attorneys for Plaintiff  
BRIAN NELSON WILLIAMS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRIAN NELSON WILLIAMS,

Plaintiff,

vs.

CITY OF MARTINEZ, GLENN  
WALKUP, J. ROGERS, B. CARTER,  
AND DOES 1 through 20,

Defendants.

Case No. C08-0449 SI

**JOINT CASE MANAGEMENT  
CONFERENCE STATEMENT**

Date: May 9, 2008  
Time: 2:00 p.m.  
Dept.: 10  
Judge: Hon. Susan Illston

The parties hereby jointly submit the following Joint Case Management Statement in preparation for the upcoming case management conference in this case.

**A. JURISDICTION AND SERVICE**

The parties agree that this Court has subject matter jurisdiction over all claims in this

1 action pursuant to 28 U.S.C. §§ 1331 and 1343. The parties further agree that this Court has  
2 personal jurisdiction over all parties and that venue in the Northern District of California is  
3 proper. All parties have been served.

4 **B. FACTS**

5 1. Plaintiff's Version

6 During the early morning of July 20, 2006, the Martinez Police Department received a call  
7 complaining of a noisy party at the home of Plaintiff, BRIAN WILLIAMS. Dispatch notified  
8 Defendant WALKUP, who reported to the address along with Defendants CARTER and  
9 ROGERS, and Officer Butler. WALKUP was accompanied by his police canine, "Enzo."

10 When the officers arrived at the address, the area was quiet and there was no evidence of a  
11 noisy party. Nonetheless, the officers sought to enter WILLIAMS' home. The front door was  
12 opened by an acquaintance of WILLIAMS, Ms. Levesque. Before permission or consent to enter  
13 was given, the officers pushed through the front door entryway and entered Plaintiff's home.

14 Levesque told the officers that WILLIAMS was upstairs in his bedroom. Butler  
15 handcuffed Levesque and told her to sit down. The officers and Enzo went upstairs.

16 WALKUP released Enzo and gave him a "search" command." Enzo found WILLIAMS  
17 in his bedroom lying in his bed. WALKUP then directed and encouraged Enzo to bite  
18 WILLIAMS numerous times in his shoulder, forearm, and legs, causing multiple puncture  
19 wounds.

20 WALKUP did not prevent Enzo from biting or continuing to bite WILLIAMS, nor did  
21 CARTER or ROGERS. CARTER and ROGERS did not intervene to require WALKUP to  
22 prevent Enzo from biting or continuing to bite WILLIAMS.

23 WILLIAMS had not committed a crime that night, nor was he suspected of committing  
24 any crime that night. He was peacefully relaxing in his bedroom during the incident. He was not  
25 on parole. It was inappropriate and unjustified for Defendants to apply any force whatsoever.  
26 Defendants knew they should have prevented Enzo from biting WILLIAMS.

27 Defendants obtained emergency medical care for Plaintiff and then transferred him for  
28 booking. WALKUP sought prosecution against Plaintiff for resisting arrest. The Contra Costa

1 County District Attorney's Office declined to prosecute in the interests of justice.

2 The following day, Plaintiff sought further medical treatment. His puncture wounds had  
3 become infected and Plaintiff needed extensive antibiotic treatment. His injuries and treatment  
4 caused Plaintiff to miss work and lose substantial income.

5 2. Defendants' Version

6 Defendants deny Plaintiff's contentions. On July 20, 2006, at approximately 3:00 a.m.,  
7 officers of the Martinez Police Department were dispatched to Plaintiff's home in Martinez on the  
8 report of a loud party. These responding officers included WALKUP, ROGERS, CARTER and  
9 Officer Butler, and WALKUP's police canine, Enzo. The officers were aware of other calls for  
10 service to Plaintiff's residence and/or this area in the past that related to violence and/or  
11 irrational/bizarre behavior of the Plaintiff. The officers were informed that Plaintiff was on active  
12 parole. Based upon Plaintiff's history, the call for a loud party and Plaintiff's active parole, the  
13 officers decided to make contact at the residence and to perform a parole search.

14 The officers went up to the front door and knocked. They all wore full police uniforms.  
15 Plaintiff opened the door a few inches and then closed it immediately and locked it. Plaintiff then  
16 fled and the officers saw him run up the stairs inside the house. The officers continued to knock  
17 on the front door while announcing they were the police and demanding entry for a parole search.  
18 Without hearing any further response, the officers prepared to force entry into the home when Ms.  
19 Levesque opened the front door.

20 At the bottom of the stairs, WALKUP made an announcement for Plaintiff to come out  
21 with his hands up or the police canine would be sent to find him. Plaintiff did not respond. The  
22 police canine was then released to go up the stairs to search for the fleeing and/or hiding Plaintiff.  
23 The officers then followed the canine up the stairs.

24 After clearing three of the four bedrooms upstairs, one bedroom door remained closed.  
25 WALKUP made a further canine announcement about ten feet from the closed bedroom door.  
26 After receiving no response, the closed bedroom door was forced open and the police canine  
27 entered the room on WALKUP's command.

28 The police canine located Plaintiff who was hiding in or around the bed in the bedroom

1 and made contact with Plaintiff. Officers could not see Plaintiff clearly due to fact that he was  
 2 attempting to conceal himself. After a brief time period, when officers could see that Plaintiff did  
 3 not have anything in his hands and when Plaintiff stopped resisting, the police canine was given  
 4 an "off" command and WALKUP took control of the canine. Plaintiff was then handcuffed.

5 After Plaintiff was handcuffed, he was given immediate first aid by officers and an  
 6 ambulance was called for further medical treatment.

### 7 3. Principal Factual Issues Likely Disputed

8 (A) Whether the Defendants saw Plaintiff run upstairs after they had knocked and  
 9 announced their presence.

10 (B) Whether Plaintiff was subject to a search and seizure clause pursuant to parole or  
 11 probation.

12 (C) Whether Plaintiff was asleep or hiding from Defendants.

13 (D) The nature and the force used by Defendants and Enzo.

14 (E) The nature and extent of Plaintiff's alleged injuries.

### 15 **B. LEGAL ISSUES**

16 The principle legal issues the parties likely dispute are as follows:

17 (A) Whether Defendants lawfully entered Plaintiff's home.

18 (2) Whether the force used by Defendants was used in a manner that was objectively  
 19 reasonable under the circumstances;

20 (3) Whether Defendants had sufficient facts to form a reasonable suspicion and/or  
 21 probable cause to detain and/or arrest Plaintiff;

22 (4) Whether the individual Defendants are entitled to qualified immunity for their actions.

23 (5) Whether or not Defendants violated the constitutional rights of Plaintiff per the 4<sup>th</sup>  
 24 and/or 14<sup>th</sup> Amendments.

25 (6) Whether Plaintiff has any legitimate state law claims for damages, including claims of  
 26 battery, false imprisonment and/or negligence.

27 (7) Whether there is any basis for liability against the City of Martinez

28 (8) Whether Defendants are entitled to any immunities, per state or federal law.

1 **C. MOTIONS**

2 All parties anticipate filing motions in limine. The Defendants anticipate filing dispositive  
3 motions.

4 **D. AMENDMENT OF PLEADINGS**

5 No amendments are anticipated at this time.

6 **D. EVIDENCE PRESERVATION**

7 The parties mutually agree to preserve all potentially relevant evidence.

8 **E. DISCLOSURES**

9 The parties shall exchange initial disclosures prior to May 9, 2008.

10 **E. DISCOVERY**

11 No discovery has been conducted thus far.

12 The Plaintiff anticipates taking the depositions of the officers and their supervisors during  
13 the summer of 2008. The Defendants will take the deposition of the Plaintiff and Ms. Levesque,  
14 any percipient witnesses identified in discovery, as well as will propound written discovery on  
15 Plaintiff. Other discovery, unknown at this time, may also be necessary.

16 **F. CLASS ACTIONS**

17 This case is not a class action.

18 **F. RELATED CASES**

19 The parties are not aware of any pending cases related to this action.

20 **G. RELIEF**

21 Plaintiff is seeking relief in this action, as follows:

- 22 1. For general damages according to proof;
- 23 2. For special damages according to proof;
- 24 3. For damages for the violation of constitutional rights, according to proof;
- 25 4. For treble damages and civil penalties, pursuant to California Code § 52;
- 26 5. For punitive and exemplary damages against WALKUP, according to proof;
- 27 6. For attorney's fees incurred in the prosecution of this action pursuant to 42 U.S.C. §

28 1988 and California Civil Code § 52;

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

7. For an award of prejudgment interest as allowable by law; and

8. For such other relief as the court may deem reasonable and just.

Defendants have not yet been able to evaluate the claimed relief and damages sought by Plaintiff.

#### **H. SETTLEMENT AND ADR**

Counsel for the parties were in the process of scheduling informal settlement discussions at the request of Plaintiff's counsel when this case was ordered to mediation by the Court. The parties submit that the matter will be ready for ADR after some written discovery and the completion of the depositions of Plaintiff, Ms. Levesque and WALKUP, likely in the next ninety (90) to one-hundred and twenty (120) days following the case management conference.

#### **I. CONSENT TO A MAGISTRATE FOR ALL PURPOSES**

Defendants have declined to have this matter adjudicated by a United States Magistrate Judge. The parties are currently assigned to Your Honor for all purposes.

#### **J. OTHER REFERENCES**

No references are necessary.

#### **K. NARROWING OF ISSUES**

The parties will attempt to narrow the issues via discovery and stipulation, though it is too premature in this matter to narrow any such issues.

#### **L. EXPEDITED SCHEDULE**

This case cannot be handled on an expedited basis.

#### **M. SCHEDULING**

///

**Proposed Schedule**

<b>Event</b>	<b>Proposed Deadline</b>
Deadline to add or substitute parties/claims without leave	June 20, 2008
Deadline to Complete ADR Mediation	July 19, 2008
Date of Next Case Management Conference	August 27, 2008
Completion of non-expert discovery	December 5, 2008
Expert Disclosure Deadline	January 16, 2009
Rebuttal Expert Disclosure Deadline	January 30, 2009
Completion of Expert Discovery	March 13, 2009
Last Day to Hear Dispositive motions	May 12, 2009
File Pre-Trial Conference Statements	June 9, 2009
Pre-Trial Conference (subject to Court's availability)	June 23, 2009
Trial Date (subject to Court's availability)	July 13, 2009

**M. TRIAL**

This case will be tried before a jury. The parties anticipate that the trial will last approximately five (5) to seven (7) court days.

**N. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES/PERSONS**

The parties have no such interest to report.

**O. OTHER MATTERS**

There does not appear to be any other matters needing discussion at this point.

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

McNAMARA, DODGE, NEY, BEATTY, SLATTERY, PFALZER, BORGES & BROTHERS LLP  
ATTORNEYS AT LAW  
P.O. BOX 5288, WALNUT CREEK, CA 94596  
TELEPHONE: (925) 939-5330

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Dated: April 30, 2008

McNAMARA, DODGE, NEY, BEATTY, SLATTERY,  
PFALZER, BORGES & BROTHERS LLP

By: /s/ Fitzgerald, James V.  
James V. Fitzgerald, III  
Noah G. Blechman  
J. Garret Deal  
Attorneys for Defendant  
CITY OF MARTINEZ, GLENN WALKUP, J.  
ROGERS, AND B. CARTER

Dated: April 30, 2008

CASPER, MEADOWS, SCHWARTZ & COOK

By: /s/ Casper, Stan  
Stan Casper  
Attorneys for Plaintiff  
BRIAN NELSON WILLIAMS